2:Scott G-5 (1870's-1909)1910 APl Burma
Burmese AP4

congregation has been made up, or when the family party is complete, the senior monk recites the Ten Precepts incumbent on all upathaka on duty days, and adds some portion of the sermons of Shin Gautama, the other pyinsin, sitting behind their big fans to hide the women from their sight, occasionally making the responses. Finally the Payeit-gyi, or some similar litany of praise, is intoned; all the congregation joining in the chant, with upraised hands clasping a flower or some other symbol of offering. With this the service ends. The yahans rise from behind their fans and file back to the monastery again, the food being carried after them by the pupils or the donors. When this is done the worshippers set about preparing their own breakfast—unless, indeed, as is probable, it was cooked at the same time as the food for the yahans. Each family eats separately, arranged in a circle round the great byat, or platter of rice. If, however, any one has some particular delicacy—the celebrated nga-pi gaung fish paste from Payā Gyi, in the An-gyi township, iguana's eggs from Shwe Gyin side, or pickled tea fresh from the Shan hills—he gives of his abundance to those round about; and any solitary stranger from a distance is always sure of an invitation to join some breakfast party. When all have finished eating, the fragments that remain are thrown out for the pariah dogs and the crows. Additional merit is of course gained by this act of charity. For the rest of the day, with the exception of the time that may be spent in repeating doxologies before the image of the Buddha at the pagoda, nothing is done. Every one is dressed in his best and goes about meeting his friends, or lolling comfortably with a cheroot in the zayat waiting for them to come to him. Vast quantities of betel-nut and pickled tea and local gossip are discussed. The racing-boat the Bassein men are getting ready to send for the October contests in Mandalay; the brass image Maung Waik, the extra assistant commissioner, is going to dedicate next month; the old witch down at Ywa Thit Gyi, who has caused the murrain among the Thu-gyi's buffaloes, and the nuisance it is that the English ayebaing will not allow her to be tied to a bamboo and pitched into the river in the good old fashion, to prove that she really does trade in the black art;

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16:Fielding Hall G-3 (1885-1890) 1898 AP1 Burma
Burmese AP4

more severely. Most of this three months he spent dwelling in the hollow shell of a palm-fruit. The nuisance was, he explained, that this shell was close to the cattle-path, and that the lads as they drove the cattle afield in the early morning would bang with a stick against the shell. This made things very uncomfortable for him inside.

It is not an uncommon thing for a woman when about to be delivered of a baby to have a dream, and to see in that dream the spirit of someone asking for permission to enter the unborn child; for, to a certain extent, it lies within a woman's power to say who is to be the life of her child.

There was a woman once who loved a young man, not of her village, very dearly. And he loved her, too, as dearly as she loved him, and he demanded her in marriage from her parents; but they refused. Why they refused I do not know, but probably because they did not consider the young man a proper person for their daughter to marry. Then he tried to run away with her, and nearly succeeded, but they were caught before they got clear of the village.

The young man had to leave the neighbourhood. The attempted abduction of a girl is an offence severely punishable by law, so he fled; and in time, under pressure from her people, the girl married another man; but she never forgot. She lived with her husband quite happily; he was good to her, as most Burmese husbands are, and they got along well enough together. But there were no children.

After some years, four or five, I believe, the former lover returned to his village. He thought

30: Maung Htin Aung E-4 (no date) 1953 AP1 Burma
Burmese AP4

Although the kingdoms of Prome and Thaton probably based their wealth on trade and commerce, and the kingdom of Pagan based its power and wealth on commerce, the Burmese have been simple agriculturists throughout their history, and therefore Burmese customary law of contract and torts dealt with the business of agriculture, such as water-rights, land-rights, hire of cattle, carts, and implements, and with the relations between employers and laborers. As has been stated before, the Burmese law of contract and tort is no longer valid, and although the Burmese still remain agriculturalists, their business of agriculture is no longer simple as in the days before the British annexation. Nonetheless, some of the rules of law in contract and torts are still of interest. For example, let us consider the law relating to payment of wages to laborers. The Burmese law did not give emphasis to that part of the wages which was to be in the form of money. But it specifically laid down that (1) in the case of an agricultural laborer, he was to receive, in addition to wages in money, a suit of clothes at the end of each "season"—i.e., the "growing season" and the "reaping season," and (2) in the case of a nonagricultural laborer, he was to receive, throughout the period of his employment and in addition to wages in money, "regular meals of rice and curry." For the agricultural laborer, who had his own store of paddy, clothing was of great consequence, and to the nonagricultural laborer food was of great consequence. Thus the Burmese law ensured that the fluctuation either in the general level of wages or in the value of money should not adversely effect either the laborer or his employer. Moreover, as both the laborer and the employer wore the same homespun clothes and ate the same food, the arrangement was fair to both parties. With regard to professional services rendered also, the Burmese law attempted to be fair to both parties, as could be seen from the following rules of law regarding physicians and lawyers:

> If a physician has been called for fee to attend to a sick person, but the sick person recovers or dies before the physician reaches

671 his bedside, the physician shall be entitled to his fee if he has
759 reached at least the doorway of the sick person's house. In the same
693 way, if a suit is withdrawn or settled, or the judge does not find it necessary to call upon the pleader to argue, the pleader shall be entitled to his fee if he has spoken even a few words, or if he has just pulled up the sleeve of his gown in a gesture of speech. If a client wishes to call in another physician, he shall pay the full fees to the first physician, and shall also offer him a cup of water in token of friendship. If a client wishes to engage another pleader, he shall pay the full fee to the first pleader.

671 The following rules regarding void sales and purchases will
432 further illustrate the essential similarity of Burmese law and the English law of contract:

> There are four cases when a sale or a purchase is void: (i) if the price fixed is below its value; by value it is meant market value at the time of the sale, and even a ruby worth a kingdom before may be sold for one-eighth of a basket of rice, if that is the prevailing market value of rubies; (ii) if the buyer is aware that the ownership of the property is being disputed; (iii) if the whereabouts of the property are not known; and (iv) if the owner of the property is in confinement or under duress.

672 Just as in the English law, under the Burmese law a per-
683 son was responsible for any injury which was the foreseeable consequence of his acts. Thus, it was a rule of law that if a person induced another person to accompany him to a place full of perils, and the latter suffered injury, the former was to pay damages to the full amount of the injury; however, if the second person was aware of the dangerous nature of the place, the damages payable were only half the amount of compensation for the injury. Under the same principle, if a host entertained his guest so well that the latter became intoxicated, the host owed a duty in law to see that the guest reached his home safely; if the guest should be allowed to go home unattended, and if he should die or suffer injury on the way through illness, exposure, snake-bite, attack by robbers or by wild beasts, the host was liable to pay full compensation. The

principle of contributory negligence was also known to Burmese law, and the following rules of law regarding "travelling at night with due caution" will serve as an illustration: 672 683

If there be occasion for a person at night to go about the city or the town, or the village, he shall go only with a lantern, for if he goes about without a lantern and is stopped, or hindered, or attacked, he shall not be entitled to damages. If, however, he is going about in search of a doctor, and if he shouts out this fact in the darkness, he shall be entitled to full compensation from the offender who stops or strikes him, even though he carries no lantern. In the same way, if a young woman goes about at night beyond the usual hours when people go about, and if she wears no kerchief on her breast, and if her modesty is outraged, she shall not be entitled to any damages.

The unity of Burmese society has always been the family, but unlike the rigidly knit Roman family or the Hindu joint family, it easily disintegrates. A Burmese family is loosely knit by ties of blood, and sometimes of marriage, and thus it usually consists of the father, the mother, and their unmarried sons and daughters. The sons however can leave the family even before marriage on attaining the age of puberty (sixteen years of age), and the daughters on attaining the age of majority, but sons and daughters of course usually leave the family only on marriage. Sometimes sons and daughters decide to remain in the family even after marriage, at least for some time. The head of the family is the father, and on his death, the mother succeeds to the headship of the family, as in Burmese law the husband and wife are heirs to each other. The head of the Burmese family exercises general control over the family, but unlike the heads of the Roman and Hindu families, he performs no religious ~~duties~~. He or she has the right to betroth his or her daughter under the age of majority to a male of his or her choice, but the right is subject to the daughter's right of repudiating the betrothal, either by refusing to marry the man chosen by her parent, or by compelling the parent to recognize her betrothal to the man of her own choice. 671 693 [584]